

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROCHELLE DEANN MARSHALLA,

Defendant.

4:12-CR-3111

MEMORANDUM AND ORDER

This matter is before the Court on the defendant's Objection and Appeal from Ruling on Motion to Review Detention (filing 47). The defendant objects to the Magistrate Judge's order (filing 46) denying the defendant's motion (filing 45) seeking release from detention. The Court has reviewed the record de novo, *see* [NECrimR 46.2\(c\)](#), and will overrule the defendant's objection.

The defendant pled guilty to conspiracy to distribute and possess with the intent to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of [21 U.S.C. §§ 841\(a\) and 846](#). That charge carries a sentence of not less than 5 years' and not more than 40 years' imprisonment. [21 U.S.C. § 841\(b\)\(1\)\(B\)](#). A person who has been found guilty of an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act, [21 U.S.C. § 801 et seq.](#), shall be detained while awaiting imposition or execution of sentence unless (1) the Court finds that (a) there is a substantial likelihood that a motion for acquittal or new trial will be granted *or* (b) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person, *and* (2) the Court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community. [18 U.S.C. § 3143\(a\)\(2\)](#); *see also* [18 U.S.C. § 3142\(f\)\(1\)\(C\)](#).

In this case, given the defendant's guilty plea, there is clearly no basis to find that a motion for acquittal or new trial will be granted. Nor does the record contain a recommendation from a Government attorney that no sentence of imprisonment be imposed—and such a recommendation is unlikely, given the mandatory minimum sentence associated with this offense. Those conclusions alone are sufficient to preclude the defendant's release on conditions, even to a structured environment such as Bristol

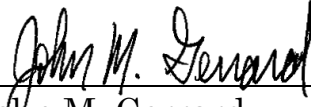
Station. But even beyond that, the Court finds no error in the Magistrate Judge's finding that the defendant failed to meet her burden of showing clear and convincing evidence that she is not likely to flee or pose a danger to any other person or the community. The defendant's record contains several instances of failure to appear at court hearings, and she failed to comply with program rules in her previous treatment program. See filings 16, 38.

IT IS ORDERED:

1. The defendant's Objection and Appeal from Ruling on Motion to Review Detention (filing 47) is overruled.

Dated this 11th day of April, 2013.

BY THE COURT:

  
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John M. Gerrard  
United States District Judge